

[NOTE: Each PPA request is evaluated on its own merits. The full text of recent prospective purchaser agreements is provided for information purposes only. The Model Prospective Purchaser Agreement will serve as a starting point for structuring future agreements.]

Note: This PPA requires the performance of a substantial amount of work by the buyer in lieu of a cash payment. It was signed (by last party - DOJ) on 3/10/99. It was published in the FR on 4/6/99 - no comments were received. The effective date is 5/28/99.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

726 MINNESOTA AVENUE

KANSAS CITY, KANSAS 66101

IN THE MATTER OF:)	
)	
CONTAINER RECYCLING SUPERFUND SITE)	
1161 South 12th Street)	
Kansas City, Kansas)	
)	Docket No. _____
)	
ALLIANCE INDUSTRIAL SERVICE, LLC,)	AGREEMENT AND COVENANT
Settling Respondent)	NOT TO SUE
)	
UNDER THE AUTHORITY OF THE)	
COMPREHENSIVE ENVIRONMENTAL)	
RESPONSE COMPENSATION, AND)	

LIABILITY ACT OF 1980, 42 U.S.C.)
§ 9601, et seq., as amended.)

I. INTRODUCTION

This Agreement and Covenant Not to Sue, also known as a Prospective Purchaser Agreement, ("Agreement") is made and entered into by and between the United States Environmental Protection Agency ("EPA") and Alliance Industrial Service, LLC ("Alliance" or "Settling Respondent"), (collectively the "Parties").

EPA enters into this Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq., and the authority of the Attorney General of the United States to compromise and settle the claims of the United States.

Alliance, the prospective purchaser of the Property, is a limited liability corporation organized under the laws of the State of Iowa, with its principal place of business located in Clive, Iowa. The prospective purchaser intends to acquire the Property, located at 1161 South 12th Street, Kansas City, Kansas, and to refurbish and operate the former drum reconditioning plant located on the Property.

Each Party agrees to undertake all actions required of that Party by the terms and conditions of this Agreement. The purpose

of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of Alliance for the existing Contamination at the Property which would otherwise result from Alliance becoming the owner of the Property.

The Parties agree that Alliance's entry into this Agreement, and the actions undertaken by Alliance in accordance with the Agreement, do not constitute an admission of any liability by Alliance.

The resolution of this potential liability, in exchange for provision by Alliance to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "ASTs" shall mean the following three above-ground storage tanks located on the Property, as indicated on the maps attached as Exhibit 2:

a. the caustic tank located inside the Property's Main Building;

b. the muriatic acid tank located just outside and to the east of the Property's Main Building; and

c. the sulfuric acid tank located outside and to the north of the Property's Main Building, near the waste water treatment unit building.

2. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

3. "Existing Contamination" shall mean any hazardous substances, pollutants, or contaminants present or existing on or under the Property as of the effective date of this Agreement.

4. "Indoor Waste Containers" shall mean all 55-gallon and smaller containers stored inside the Property's Main Building (as defined herein) which contain waste material, as determined by EPA. The contents of these containers include, but are not limited to, paint sludge, waste paint, and shot blast dust.

5. "Parties" shall mean EPA and Alliance.

6. "Property" shall mean that portion of the Site being purchased by Alliance which is described in Exhibit 1 of this Agreement.

7. "RCRA-empty drums" shall means those drums that meet the definition of empty pursuant to 40 C.F.R. § 261.7(b).

8. "Settling Respondent" or "Alliance" shall mean Alliance Industrial Service, LLC.

9. "Site" shall mean the Container Recycling Superfund Site, encompassing approximately 20 acres, located at 1161 South 12th Street in Kansas City, Kansas, and depicted generally on the maps attached as Exhibit 2. The Site includes the Property, and all adjacent areas where hazardous substances, pollutants, or contaminants have come to be located.

10. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

11. The Site is located at 1161 South 12th Street in Kansas City, Kansas. In 1965, Sims Barrel Company developed the approximately 20-acre Property as a drum reconditioning, recycling, and storage facility. The Property lies within the Site and contains a 50,550 square foot building ("Main Building"), which had been used for both office space and drum processing.

12. The Property was utilized as a drum reconditioning, recycling, and storage facility for approximately 31 years, from 1965 until November 1996. A series of entities owned and operated the facility during this time.

13. In November 1996, operations ceased due to the initiation of bankruptcy proceedings against Container Recycling, Inc., the most recent owner and operator of the facility. Since approximately November 1996, the Property has been unoccupied and

has been under the trusteeship of the United States Bankruptcy Court for the District of Kansas.

14. When Container Recycling ceased operations in 1996 it left behind various containerized hazardous substances, including the following wastes: acids, caustic solution, paint, and paint sludge. In addition, results of sampling and analysis conducted by EPA in 1997 and 1998 confirmed the existence of heavy metal and PCB contamination in soils on the Property. EPA has information indicating that materials containing hazardous substances were typically poured onto the ground during the operations, and that several hundred or more drums containing hazardous substances may have been landfilled on the Property. There are currently approximately 70,000 deteriorating drums stored on the ground at the Property, many of which contain various residues.

15. EPA is currently investigating the Site to determine the level of response required to address the contamination present at the Site. As part of this investigation, EPA plans to verify the presence or absence of buried drums at the Property.

16. The estate of Container Recycling, Inc., is currently in bankruptcy proceedings. Premier Bank holds a mortgage on the Property in the amount of approximately \$525,000.

17. Alliance intends to purchase the mortgage note from Premier Bank, obtain title to the Property, make certain repairs

and improvements to the Property, and then operate a drum reconditioning facility on the Property.

18. Alliance represents, and for the purposes of this Agreement EPA relies on those representations, that neither Alliance nor its officers or shareholders has had any involvement with the Site, or with prior owners or operators of the Site, other than by making inquiries related to purchasing the Property.

IV. ALLIANCE'S OBLIGATIONS

19. In consideration of and in exchange for the United States' Covenant Not to Sue in Section VIII herein, Alliance shall, within ninety (90) days from the later of EPA's approval of the Work Plan or Alliance's acquisition of title to the Property, and at its expense:

a. Legally dispose of or recycle all contents of the Indoor Waste Containers; and drain or otherwise remove all liquids and other contents from the three ASTs and legally dispose of or recycle all such contents. During all such activities, Alliance shall manage the contents in accordance with all requirements of federal and state law. In the case of any transfer or other removal of contents containing hazardous waste, Alliance shall ensure that the transfer complies with all manifesting requirements under applicable federal or state law and that any such transfer is made to a facility that is licensed

under applicable law for receipt of such hazardous waste. In the event the contents of the Indoor Waste Containers and/or the contents of the three ASTs contain usable product or materials, Alliance shall be allowed a period of one (1) year from the date of EPA's approval of the Work Plan to use the materials at the Facility in lieu of disposing of such contents.

b. Except to the extent that provisions (i) and (ii) below are applicable, remove, and legally dispose of or recycle, all of the estimated 70,000 30-gallon and 55-gallon drums located on the Property, subject to the requirements of provisions (i), (iii) and (iv) below:

i. Alliance shall be required to remove and dispose of all RCRA-empty drums, and shall not be required to remove or dispose of non-RCRA-empty drums. With regard to non-RCRA-empty drums, Alliance must stage any such drums, for ultimate disposal by EPA, in such locations and in such manner to be described by the EPA-approved Work Plan developed pursuant to Paragraph 21 of this Agreement. Such temporary staging areas shall be located in areas designated by EPA and shall be constructed by Alliance in a manner designated by EPA, which shall be designed to contain any materials which may spill or leak from the staged drums. Once the staging area is located by EPA and constructed by Alliance, Alliance shall have no further right, duty or obligation to modify, repair or maintain the

staging area. Once Alliance has placed the drums in the staging area, Alliance shall have no further right, duty or obligation to oversee, protect, handle, maintain or otherwise be involved with the drums or any remedial or removal activities relating to the drums or the staging areas and such further activities shall be the responsibility of EPA.

ii. Where certain RCRA-empty drums are in such good condition that their reuse in commerce for the storage and shipment of substances is practical, Alliance shall not be required to remove and dispose of such drums. However, notwithstanding this provision, Alliance must remove and dispose of at least ninety percent (90%) of the RCRA-empty drums that are stored on the Property.

iii. Any RCRA-empty drum that is not rinsed or heat treated must be disposed of at a metal or steel smelting facility, where the drums would be melted down to reclaim their steel content.

iv. If EPA determines that the presence of certain remaining RCRA-empty drums at a particular location on the Property is obstructing EPA's response action at the Site, Alliance shall, upon written request by EPA, move the drums to a location which does not interfere with EPA's response action.

c. Remove, and legally dispose of, recycle, or sell at least eighty percent (80%) of the truck trailers stored on the

Property. If truck trailers used for the staging of drums prevent compliance with this eighty percent (80%) requirement, Alliance shall satisfy the eighty percent (80%) requirement within ninety (90) days of the date that the truck trailers are no longer being used for the staging of non-RCRA-empty drums. If EPA determines that a remaining trailer's presence at a particular location on the Property is obstructing EPA's response action at the Site, Alliance shall, upon written request by EPA, move the trailer to a location which does not interfere with EPA's response action.

20. During the removal process and throughout Alliance's performance of its obligations under this Agreement, Alliance shall comply with all applicable federal and state laws, regulations, obligations, and requirements, including worker safety and environmental protection requirements. All removal field work shall be conducted only by persons who are fully qualified to perform such work and who have OSHA health and safety training.

21. Work Plan. Within fourteen (14) days after the effective date of this Agreement, Alliance shall submit to EPA, for review and approval, a draft Work Plan for performing the work set forth in Paragraph 19 above. The draft Work Plan shall provide a detailed description of, and an expeditious schedule for, the work required.

22. EPA may approve, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Alliance shall submit a revised draft Work Plan within fourteen (14) days of receipt of EPA's notification of required revisions. Alliance shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved therein. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Agreement. Alliance shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA-approved Work Plan. Alliance shall not commence or undertake any removal actions at the Property without prior EPA approval.

23. Health and Safety Plan. Within fourteen (14) days after the effective date of this Agreement, Alliance shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Agreement. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. The plan shall also include contingency planning. Alliance shall incorporate all changes to the plan recommended by EPA and implement the plan during the pendency of Alliance's activities at the Property.

24. Plan Modification. If EPA determines that modification of the Work Plan or Health and Safety Plan is necessary to carry out the requirements of this Agreement, EPA may notify Alliance that such modification is required to be incorporated into the Work Plan or Health and Safety Plan, subject to the provisions of Section XV (Dispute Resolution). Alliance shall submit a revised Work Plan or Health and Safety Plan, as applicable, within fourteen (14) days of receipt of such notification and shall implement the required modification as finally approved in writing by EPA. Nothing contained in this paragraph shall prohibit EPA from considering and acting upon any request by Alliance to modify the approved Work Plan or Health and Safety Plan.

25. Quality Assurance and Sampling. All sampling and analyses performed pursuant to this Agreement, if any, shall conform to EPA direction and approval, and EPA guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Alliance shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with EPA guidance.

26. Reporting. Alliance shall submit a monthly written progress report to EPA concerning actions undertaken pursuant to this Agreement, beginning thirty (30) days after the date of EPA's approval of the Work Plan, until the completion of all

obligations and requirements under this Agreement. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

27. Final Report. Within sixty (60) days after completion of all activities required under this Agreement, Alliance shall submit for EPA review a final report summarizing the actions taken to comply with this Agreement. The final report shall include a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, if any, and accompanying appendices containing all relevant documentation generated during Alliance's activities at the Property (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Alliance:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

When EPA determines, after review of the Final Report, that all work has been fully performed in accordance with this Agreement, EPA will provide written notice to Alliance. If EPA determines that any activities have not been completed in accordance with this Agreement, EPA will notify Alliance, provide a list of the deficiencies, and require that Alliance modify the Final Report or Work Plan, as appropriate, to correct such deficiencies. Alliance shall, as applicable, implement any modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice.

28. Off-Site Shipments. Notwithstanding any other provision of this Agreement, all hazardous substances, pollutants or contaminants removed off-site pursuant to this Agreement for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 CFR § 300.440.

29. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during Alliance's performance of work at the Property which results in whole or part from any act or omission by Alliance, or its successors, assignees, contractors, representatives, lessees, or agents, and which causes or contributes to or threatens a release of hazardous substances, pollutants or contaminants at or from the Property or an endangerment to the public health or welfare

or the environment, Alliance shall immediately take all appropriate action to prevent, abate, remediate, remove, and minimize such release or endangerment caused or threatened by the release. Alliance shall submit a written report to EPA within seven (7) days after the action or occurrence, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. In the event that Alliance fails to take appropriate action as required by this Section, and EPA takes such action instead, Alliance shall reimburse EPA for all costs of the response action. With respect to any claim or cause of action asserted by the United States under this subparagraph, Alliance shall bear the burden of proof. Alliance reserves its right to assert any defenses available to it under applicable law, including without limitation of the generality of the foregoing, an argument that any release and contamination caused by it is divisible from other releases or contamination. The United States reserves all rights to contest any defense asserted by Alliance under applicable law.

b. Alliance shall also immediately notify the EPA Project Coordinator (presently Jim MacDonald, 913-551-7767), or in the case of his unavailability, the Regional Duty Officer, Superfund Division, EPA Region VII, (913) 281-0991, of any action

or occurrence during Alliance's performance of work at the Property which Alliance knows (or should know given Alliance's activities at the Property) has caused or contributed to or threatened a release of hazardous substances, pollutants or contaminants at or from the Property or an endangerment to the public health or welfare or the environment, whether or not resulting in whole or part from any act or omission by Alliance, or its successors, assignees, contractors, representatives, lessees, or agents. Alliance shall also comply with any other notification requirements required by law, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

c. Nothing in this Agreement shall be deemed to limit any authority of EPA to take all appropriate action, or to direct or order such action, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants on, at, or from the Property, subject to Section VIII (United States' Covenant Not To Sue).

30. EPA shall be responsible for overseeing the implementation of the work required by this Agreement, and shall have the authority to halt, conduct, or direct any such work.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

31. Commencing upon the date that it acquires title to the Property, Alliance agrees to provide to EPA, its authorized officers, contractors, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by Alliance, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to Alliance of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et seq., and any other applicable statute or regulation, including any amendments thereto.

32. Alliance shall contractually require that all assigns, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation. Alliance shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall contractually require that any

subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, Section XI (Parties Bound/Transfer of Covenant) and Section IV (Alliance's Obligations) of this Agreement.

33. Within thirty (30) days after the effective date of this Agreement, Alliance shall record a certified copy of this Agreement in the Registry of Deeds Office in Kansas City, Wyandotte County, Kansas. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents should be sent to the persons listed in Section XVIII (Notices and Submissions).

VI. DUE CARE/COOPERATION

34. Alliance shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Alliance recognizes that the implementation of response actions at the Site may interfere with Alliance's use of the Property, and may require closure or delay of its operations or a part thereof. Alliance agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Alliance's

operations by such entry and response. In the event that Alliance becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Alliance shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

35. By entering into this Agreement, Alliance certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Alliance and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. Alliance also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information

provided by Alliance is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

36. Subject to the Reservation of Rights in Sections VII (Certification) and IX (Reservation of Rights) of this Agreement, upon completion of the work specified in Section IV (Alliance's Obligations) of this Agreement to the satisfaction of EPA, the United States covenants not to sue or take any other civil or administrative action against Alliance for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with respect to the Existing Contamination.

IX. RESERVATION OF RIGHTS

37. The covenant not to sue set forth in Section VIII (United States' Covenant Not to Sue) above does not pertain to any matters other than those expressly specified in Section VIII. The United States reserves and the Agreement is without prejudice to all rights against Alliance with respect to all other matters, including but not limited to, the following:

a. Any claims based on a failure by Alliance to meet any of its obligations under this Agreement, including but not limited to Section IV (Alliance's Obligations), Section V

(Access/Notice to Successors in Interest), Section VI (Due Care/Cooperation), Section XIV (Payment of Costs);

b. Any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Alliance, its successors, assignees, lessees or sublessees;

c. Any liability resulting from exacerbation of Existing Contamination by Alliance, its successors, assignees, lessees or sublessees;

d. Any liability resulting from the release or threat of release of hazardous substances, pollutants, or contaminants at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

e. Criminal liability;

f. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

g. Liability for violations of local, State or federal law or regulations.

38. With respect to any claim or cause of action asserted by the United States, Alliance shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

39. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

40. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than Alliance to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Alliance acknowledges that it is purchasing property where response actions may be required.

X. ALLIANCE'S COVENANT NOT TO SUE

41. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, Alliance hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through

CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities. Alliance also covenants not to sue and not to assert any claim that response actions performed by EPA, that are not inconsistent with the NCP, constitute an uncompensated taking of property or an interference with Alliance's business activities or property rights.

42. Alliance reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of Alliance's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA.

43. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

44. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding on Alliance, its

officers, directors, employees, and agents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

45. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Alliance under this Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion. Alliance agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to such assignment or transfer.

46. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including, but not limited to, the certification requirement in Section VII of this Agreement, in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be

effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

XII. DISCLAIMER

47. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site, nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

48. Alliance agrees to retain and make available to EPA all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, Alliance shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. PAYMENT OF COSTS

49. If Alliance fails to comply with the terms of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XV. DISPUTE RESOLUTION

50. The Parties to this Agreement shall attempt to resolve, expeditiously and informally, any disagreements concerning this Agreement. If Alliance objects to any EPA action taken pursuant to this Agreement, Alliance shall notify EPA in writing of its objection within ten (10) days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Alliance's position, and all supporting documentation on which such party relies. EPA shall submit its Statement of Position, including supporting documentation, no later than ten (10) days after receipt of the written notice of dispute. An administrative record of any dispute under this Section shall be maintained by EPA, as applicable. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 7, shall resolve the dispute consistent with applicable law and the terms of this Agreement. Following resolution of the dispute, as provided by this Section, Alliance shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, as applicable, whichever occurs. The failure of

Alliance to provide timely notice of a dispute constitutes a waiver of any dispute over the issue.

XVI. INDEMNIFICATION

51. The United States assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Alliance pursuant to this Agreement. The United States shall not be a party or be held out as a party to any contract entered into by the Alliance or its directors, officers, employees, agents, successors, assigns, representatives, contractors, or consultants in carrying out activities pursuant to this Agreement.

52. Alliance agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, employees and representatives from any and all claims or causes of action arising from, or on account of, acts or omissions of Alliance and Alliance's officers, heirs, directors, employees, agents, contractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Agreement.

XVII. CONTRIBUTION PROTECTION

53. With regard to claims for contribution against Alliance, the Parties hereto agree that Alliance is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this

Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

54. Alliance agrees that with respect to any suit or claim for contribution brought by Alliance for matters related to this Agreement, Alliance will notify the United States in writing no later than sixty (60) days prior to the initiation of such a suit or claim.

55. Alliance also agrees that with respect to any suit or claim for contribution brought against Alliance for matters related to this Agreement, Alliance will notify in writing the United States within ten (10) days after the complaint is served on Alliance.

XVIII. NOTICES AND SUBMISSIONS

56. All notices sent under this Agreement shall be directed to the parties as follows:

Environmental Protection Agency

James MacDonald
On-Scene Coordinator
Superfund Division
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

Alliance Industrial Service, LLC

Attn: William Reed
Alliance Industrial Service, LLC
9200 Hickman Rd.
Clive, Iowa 50325

XIX. EFFECTIVE DATE

57. The effective date of this Agreement shall be the date upon which EPA issues written notice to Alliance that EPA has fully executed the Agreement after review of and response to any public comments received; provided that this Agreement shall become null and void and have no effect in the event that Alliance does not acquire title to the Property within one hundred eighty (180) days from the effective date, or such other time as the Parties may concur in writing.

XX. TERMINATION

58. If any Party or successor-in-interest believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party or successor-in-interest may request in writing that the other Party agree to terminate the provision establishing such obligations; provided, however, that the provision in question shall continue in force unless and until the Party or successor-in-interest requesting such termination receives written agreement from the other Party to terminate such provision.

XXI. PUBLIC COMMENT

59. This Agreement shall be subject to a thirty (30) day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which cause EPA to conclude that this Agreement is inappropriate, improper or inadequate.

XXII. EXHIBITS

60. The following exhibits are attached to this Agreement:

"Exhibit 1" is the Property description.

"Exhibit 2" contains maps depicting the Property.

IT IS SO AGREED:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date

Dennis Grams, P.E.
Regional Administrator
U.S. Environmental Protection Agency
Region VII

FOR THE UNITED STATES OF AMERICA

Date

Lois J. Schiffer
Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice

FOR ALLIANCE INDUSTRIAL SERVICE, LLC

Date

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By: _____

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